

Remarks

Claims 2, 4, 5, 7, 10, 11, and 19-24 are currently pending and stand rejected. No claims have been amended. Applicants assert that the claims are in condition for allowance as set forth more fully below.

Interview Summary

On February 3, 2006 a phone interview was conducted with the examiner concerning the instant case. During the interview the Admitted Official Notice was discussed as well as the deficiencies of the Pruett reference. During the interview it was determined that the Examiner may have overlooked the May 12 after final response that contained the Applicant's traverse of the Examiner's previous official notice and merely responded to the RCE which did not address the Official Notice. The Examiner requested that the Applicants readdress this issue in the next response for his review for likely error and withdrawal.

It was further discussed that Pruett failed to disclose a billing department aggregating expenses incurred by multiple technicians where the problem actually existed elsewhere. Applicant's pointed out that while Pruett may disclose a trouble assignment desk determining a common problem to forestall sending technicians to unnecessary locations, it was a leap of logic that Pruett was disclosing that the billing department aggregated the costs of the related technician calls occurring prior to forestalling sending additional technicians by tracking line numbers to a common trunk line then billing a third party actually responsible for the damage causing the various trouble calls. It was requested that Applicants resubmit these arguments as well.

103 Rejections

Claims 2, 4,5, 7,10, 11, and 19-24 stand rejected under 35 USC 103(a) as being unpatentable over Pruett (US Pat 5,953,389). It is asserted in the office action that Pruett discloses all of the elements except billing the entity found to be responsible for the cause of the malfunction. However, the Office Action has taken, as if admitted, Official Notice that it is well known in the art to bill the party responsible for all costs incurred. Applicants respectfully traverse these rejections.

The Examiner implies that in Pruett, because malfunctions are grouped according to a common cause and costs for each diagnosis related to the cause are tracked, it is possible to determine and aggregate the costs for each diagnosis when a field technician closes out the trouble report. These teachings fail to disclose all of the elements of the claims. Independent claims 20 and 23 each recite similar subject matter. As a representative sample, claim 20 recites,

“[a] method of processing reports of malfunctions received by a company having a dispatch division and a billing division, identifying, by the company, an entity other than a first subscriber of the first subscriber location that is responsible for the cause; and utilizing the information, by the billing division, to generate a bill to the entity other than the first subscriber that includes costs incurred at least for diagnosing the malfunction at the first subscriber location by looking up the range of line numbers associated with the cause for which the entity is responsible, finding that the first line number falls within the range, looking up the costs incurred for the first line number, and including the costs incurred for the first line number on the bill to the entity”.

Applicants assert that even if it is true that there are direct costs associated with each separate diagnosis reported by a technician and where the costs of each discrete diagnosis he completes are tracked, and further assuming that the Examiner's Official Notice that car insurance companies bill a third party for the damage the third party caused, there still is no teaching, suggestion or motivation disclosed in Pruett that the billing department generates a bill to a third party who actually caused the damage by analyzing the line numbers involved and including the costs of diagnosis by a technician from the first location with those costs for performing the repair to the actual cause at an entirely different location. Nor is there disclosure that the billing department should combine costs among different technicians diagnosing problems at various locations concerning a common cause of a multi-line failure at a different location. Pruett merely discloses that the case worker may determine that the entire cable is defective so as to not to dispatch any additional repair technicians. (Col. 40, l. 57-67). In Pruett, the caseworker is not part of the billing department, nor does Pruett disclose that the billing department determines the bill by analyzing the line numbers for dispatches to various locations to include those costs with those costs incurred at the location of the actual cause.

Therefore Pruett fails to disclose all of the elements of independent claims 20 and 23 because while Pruett may group alarms to avoid dispatching technicians where the alarms are related to a cause already being addressed, there is no disclosure or suggestion in Pruett that such a grouping is or can be used for the purpose of billing a third party for costs of diagnosis at various locations together with the cost of repair at the location of the actual cause. The grouping is instead for making the repair process more efficient by reducing the dispatch of technicians.

Furthermore, there is no suggestion in Pruett to adopt a business concept from the non-analogous insurance industry where third parties (i.e. other insurance companies) are usually liable for damages by contract and long standing customs of the trade. Such an insurance concept would not be considered pertinent by one of ordinary skill in the art of billing for a company that dispatches technicians to repair a subscriber line. MPEP 2141.01(a); In Re Clay, 966 F.2d 656 (Fed Circ. 1992).

Official Notice

The Office Action asserts that the Examiner's common knowledge statement made in the Office Action mailed 5/12/05 is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of Official Notice or the traverse was inadequate. MPEP 2144.03(C). Applicants respectfully challenge the Examiner's presumption of admission.

Applicants respectfully point out that Applicants specifically traversed the Examiner's Official Notice in detail in Applicants' After Final Response mailed 07/12/05. In that response, Applicants specifically pointed out errors in the Examiner's previous action and further indicated that the Examiner was required to produce written authority for his statement. See 37 CFR 1.104(c)(2). The present office action merely relies on the Examiner's previous Official Notice, now asserted to be admitted, and an automobile insurance hypothetical which appears to be both non-analogous art and to spring from the Examiner's personal knowledge. If the Examiner is relying on personal knowledge to support his finding of what is known in the art of telecommunications billing, the Examiner is required to provide an affidavit or declaration setting forth specific statements and explanations to support his finding. 37 CFR 1.104(d)(2). If the

Examiner is suggesting that the traverse was inadequate, then the Examiner is required to include an explanation as to why the traverse was inadequate. MPEP 2144.04(c). In either event, Applicants assert that the instant office action has failed to comply with the requirements for proper use of official notice under MPEP 2144 and the Official Notice must be withdrawn as valid art unless MPEP 2144.04 is complied with.

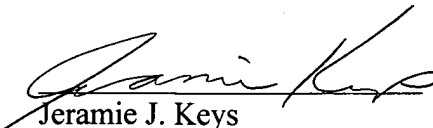
Conclusion

Applicants assert that the application including claims 2, 4, 5, 7, 10, 11, and 19-24 is in condition for allowance. Applicants request reconsideration in view of the remarks above and further request that a Notice of Allowability be provided. Applicants also reiterate their demand for written authority to support the Official Notice assertion or a cogent explanation as to why their traverse was inadequate. Should the Examiner have any questions, please contact the undersigned.

No fees are believed due. However, please charge any additional fees or credit any overpayment to Deposit Account No. 50-3025.

Respectfully submitted,

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